

REMARKS

Applicants' representative Jonathan Bockman thanks Examiner Juska for the courtesies she extended during the interview held on December 11, 2009. During the interview applicants' representative discussed the amendment filed on October 14, 2009. Specifically, applicants' representative pointed out that the prior art does not disclose or suggest a carpet including a multifilament crimped yarn having the following characteristics: 1) a melting point of equal to or higher than 130°C, 2) a crimp elongation rate of 3-35% after being processed with boiling water, 3) a boiling water shrinkage of not higher than 10%, and 4) a breaking strength of 1-5 cN/decitex. In addition, the prior art fails to disclose a crimped yarn obtained by a two-step drawing processes that possesses these characteristics. As detailed below, for these reasons, the pending rejections should be withdrawn.

During the interview, Examiner Juska stated that she would reconsider applicants' rejection if these arguments were detailed in a supplemental response. However, prior to applicants' filing of a supplemental response the Examiner issued a non-final office action dated December 24, 2009. Accordingly, this amendment responds to the Examiner's statements made during the interview and to the non-final office action of December 24, 2009.

Claims 22-24 stand rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over WO/65140 to Matsunaga et al. Claims 22-24 stand rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over US2003/0152743 to Matsunaga et al. Note, as the Examiner indicates, US2003/0152743 is equivalent to WO/65140, accordingly, these two applications will be collectively referred to as "Matsunaga" herein.

As detailed in the response filed October 14, 2009, applicants claim a carpet including a multifilament crimped yarn having the following characteristics: 1) a melting point of equal to or higher than 130°C, 2) a crimp elongation rate of 3-35% after being processed with boiling water, 3)

a boiling water shrinkage of not higher than 10%, and 4) a breaking strength of 1-5 cN/decitex. The Examiner states that the yarn in Matsunaga would inherently possess these characteristics. This is incorrect. As stated in MPEP section 2112 “[t]o establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” (*quoting In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted)). As shown in Mr. Mito’s declaration submitted February 13, 2009, a yarn produced according to the processes disclosed in Matsunaga does not necessarily possess the claimed properties. In fact, Mr. Mito actually showed that a yarn produced according to the processes disclosed in Matsunaga does not have the claimed breaking strength.

The Examiner stated during the interview that a one step drawing processes could be utilized to produce a multifilament crimped yarn having the claimed characteristics as shown in Comparative Example 3 and Example 12. As explained to the Examiner during the interview, Comparative Example 3 and Example 12 are not prior art, and as shown in Mr. Mito’s declaration the cited prior art does not disclose a multifilament crimped yarn having the claimed characteristics. Accordingly, since the prior art including Matsunaga fails to disclose or suggest a yarn with the claimed properties and since applicants have shown that these properties would not necessarily be possessed by yarn in Matsunaga, this rejection should be withdrawn.

In addition, the prior art fails to disclose a yarn produced with a two step drawing process. In addition to the claimed properties, the two step drawing process produces a higher quality yarn with improved manufacturing ability/spinning ability than a one step drawing processes. Since a yarn produced with a two-step drawing processes would not be inherently the same a yarn produced with a one-step drawing processes this limitation must be given patentable weight by the Examiner.

Finally, in order to advance prosecution of this application claim 22 has been amended to specify that the multifilament crimped yarn has a “crimp elongation rate of ~~[[3]]~~5.2-35% after being processed with boiling water.” This amendment is supported by Examples 1-7 of the application which disclose multifilament crimped yarns having a crimp elongation rate of 5.2. As disclosed in paragraph [0089] the claimed two-step drawing process produces a yarn with a superior crimp elongation rate compared to a one step drawing process. The yarn of Comparative Example 3, which was produced utilizing a process that is not part of the invention as claimed, did not satisfy this condition. Accordingly, since the prior art does not disclose or suggest a yarn with the claimed characteristics and since these characteristics are not inherent to prior art yarns, the rejections of claims 22-24 should be withdrawn.

New claims 30 and 31 are supported by at least paragraph [0022] of the application.

In view of the above, each of the claims in this application is in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing **Docket No. 360842009710**.

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Respectfully submitted,

By 

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